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March 26, 2010

VIA ECF

Magistrate Judge E. Thomas Boyle
United States District Court
100 Federal Plaza
Central Islip, New York 11722

Re: Mariano v. LA Fitness International, LLC,
No. 09-CV-1395 (LDW) (ETB)

Dear Judge Boyle:

We are counsel for Defendants and write along with counsel for Plaintiff to respectfully request an extension of time to submit a Pre-Trial Order, which is currently due on March 31, 2010.¹ As Your Honor is aware, Plaintiff filed a Motion for Extension of Discovery on March 11, 2010 (the “Motion”). Given the pending Motion, the parties want to avoid having to incur the cost of drafting and submitting the Pre-Trial Order twice if Your Honor grants the Motion. Accordingly, the parties respectfully request that the date for submission of the Pre-Trial Order be adjourned until either (i) thirty days after an order denying the Motion or (ii) if Your Honor grants the Motion, thirty days from the end of discovery. This is the first request for an extension. Pursuant to Your Honor’s Individual Motion Practices, enclosed is a proposed revised Scheduling Order.

¹ Though the Discovery Order of August 4, 2010 (annexed hereto as Exhibit A) provides that the date of the submission of the Pre-Trial Order is sixty days from the end of discovery (which would be May 10, 2010), the Civil Conference Order (annexed hereto as Exhibit B) provides that the Pre-Trial Order is due March 31, 2010.

If you have any questions, please do not hesitate to contact the undersigned or counsel for Plaintiff, Anthony C. Donofrio, at (516) 797-9797.

WOLLMUTH MAHER & DEUTSCH LLP

Respectfully submitted,



By: Andrew S. Baron

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Counsel for Defendants

Enclosures

cc: Anthony C. Donofrio, Esq. (via email)
Counsel for Plaintiff

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

YVETTE MARIANO,

X

: Plaintiff, : No. 09-CV-1395 (LDW) (ETB)

v.

: PROPOSED
DISCOVERY ORDER

LA FITNESS INTERNATIONAL, LLC, d/b/a a/k/a LA
FITNESS, INC., LA FITNESS and LA FITNESS
SPORTS CLUBS, and ANABELL SERANO a/k/a
ANDY SERANO

: Defendants.

X

E. THOMAS BOYLE, Magistrate Judge:

The following persons participated in a Rule 26(f) conference on July 14, 2009 via telephone:

Arnab Bhukta, Esq., counsel for Plaintiff Yvette Mariano ("Plaintiff"); and Andrew S. Baron, Esq., counsel for Defendants LA Fitness International, LLC and Anabell Serano ("Defendants").

1. The deadline for motions to amend pleadings including joinder of additional parties is August 7, 2009.
2. The date for service of initial document production demands and interrogatory requests is August 7, 2009 with responses served within thirty (30) days.
3. The deadline for seeking approval to file any motion for summary judgment is 30 days after close of fact discovery.
4. The date for submission of the pre-trial order is sixty (60) days after close of discovery.
5. All fact discovery to be completed by December 11, 2009. All expert disclosures, including reports, production of underlying documents and depositions are to be completed by Plaintiff 45 days after close of fact discovery. All expert disclosures, including reports, production of underlying documents and depositions are to be completed by Defendants 45 days after submission of Plaintiff's expert disclosures. All discovery to be completed no later than 90 days after completion of fact discovery.
7/1/10
6. The parties do not anticipate the disclosure and discovery of electronically stored information.

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7. Claims of privilege, including the procedure to follow for returning inadvertently produced materials, to be handled in accordance with Rule 26(b)(5) of the Fed. R. Civ. Proc.

SO ORDERED.

DATED: New York, New York
8/4/09, 2009

/s/ E. Thomas Boyle, U.S.M.J.

E. THOMAS BOYLE
UNITED STATES MAGISTRATE JUDGE

EXHIBIT B

BEFORE: **E. THOMAS BOYLE**
UNITED STATES MAGISTRATE JUDGE

DATE: AUGUST 4, 2009

TIME: 11:00 A.M.

ASSIGNED JUDGE: WEXLER

DOCKET NO. CV-09-1395 CASE: MARIANO V. LA FITNESS INTERNATIONAL LLC
U.S. DISTRICT COURT E.D.N.Y.CIVIL CONFERENCEInitial X Status Discovery Settlement Final Pre-trialMotion FTR = 11:25 - 11:32.Automatic Discovery: Has been () Has Not Been () Completed.

APPEARANCES: Plaintiff

Defendant

no appearance
no communication
with the ct.Andrew S. Baron* Discovery completed by 3/11/10 including ex parte

*The discovery completion date specified in any pre-trial order is the last day to serve discovery responses. To be timely, discovery requests must be served sufficiently in advance of the discovery completion date for responses to be served prior to the discovery completion date.

Next Final conference 4/14/10 at 2:00 pm by phonePre-Trial Order filed by 3/31/10 List of Trial Witnesses + Trial Exhibits

Plaintiff _____

Defendant _____

The conference call should be made through the teleconference operator provided by your long-distance service (e.g., AT&T, MCI, Sprint).

THE FOLLOWING RULINGS WERE MADE:

1. Plaintiff(s) shall serve all automatic disclosure (Rule 26(a)(1)) by _____
Defendant(s) shall serve all automatic disclosure (Rule 26(a)(1)) by _____2. The parties shall serve document production/interrogatory demands by _____
The parties shall respond to outstanding document production/

Defendant Plaintiff's counsel may make application
 for counsel fees & costs o o o o o
 arising from Plaintiff's attorney's
 failure to appear today.

/s/ E. Thomas Boyle, U.S.M.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
YVETTE MARIANO, :
: Plaintiff, : No. 09-CV-1395 (LDW) (ETB)
: :
: v. :
: :
LA FITNESS INTERNATIONAL, LLC, d/b/a a/k/a LA : REVISED
FITNESS, INC., LA FITNESS and LA FITNESS : SCHEDULING ORDER
SPORTS CLUBS, and ANABELL SERANO a/k/a :
ANDY SERANO, :
: Defendants. :
----- X

The date for submission of the Pre-Trial Order is either (i) thirty (30) days from an Order denying Plaintiff's Motion for Extension of Discovery, filed March 11, 2010 or (ii) if the Court grants such motion, thirty (30) days from the end of discovery.

SO ORDER.

Dated: Central Islip, New York
_____, 2010

E. THOMAS BOYLE
UNITED STATES MAGISTRATE JUDGE